

COUNTY OF MILWAUKEE
Inter-Office Communication

Date: February 16, 2006

To: Supervisor Lee Holloway, Chairman, Milwaukee County Board of Supervisors

From: Jerome J. Heer, Director of Audits

Subject: Review of Behavioral Health Division Award of Contracts to Bell Therapy
(File No. 06-77)

Background

On February 2, 2006, the Milwaukee County Board adopted a resolution (File No. 06-77) calling for a review of the public bidding procedures used by the Department of Health and Human Services (DHHS) Behavioral Health Division (BHD) to award two contracts to Bell Therapy. An Associated Press article reporting that BHD had issued two contracts to Bell Therapy in December 2004 triggered the call for an audit. The first was a \$250,000 no-bid contract to operate an eight-bed Community Based Residential (CBR) facility. The second contract was a \$1,248,112 contract for Community Support Program (CSP) services case management. Both contracts were questioned because of the timing of campaign contributions to the County Executive by senior executives of Phoenix Care Systems, Inc. Bell Therapy is a subsidiary of Phoenix Care Systems.

Issues

Several questions arise from the concerns expressed in the adopted resolution:

1. Was the \$250,00 sole source contract award for the eight-bed CBR facility awarded in a proper manner?
2. Was the \$1,248,112 contract for CSP case management services awarded in a proper manner?
3. Were campaign contributions by Phoenix Care Systems officials made in compliance with County Ordinances governing such contributions?

Sole Source Contract for Community Based Residential Facility

BHD worked throughout 2004 to finally address a long-standing critical shortfall in the community's capacity to meet acute psychiatric inpatient and emergency service needs. A September 20, 2004 memo to the Committee on Health and Human Needs provides a summary of those challenges (see Exhibit A). The report points out that one of the strategies to resolve this problem was to create additional crisis respite beds in the community.

Internal BHD correspondence indicates that staff considered a number of alternative vendors to provide this service. Bell Therapy was determined to be best suited to provide the service because it was the only agency with the immediate availability of a facility, beds and staff. A sole source approach was recommended because of the need for a quick resolution to the lack of capacity. BHD was moving forward on this initiative in conjunction with four area hospitals that had agreed to participate in funding this service.

On December 8, 2004, the Committee on Health and Human Needs considered and approved the Department's recommendation to undertake a sole source contract with Bell Therapy for the eight-bed crisis respite service. Final County Board approval of the contract occurred on December 16, 2004

It is our conclusion that the decision to award the sole source contract for psychiatric crisis respite services to Bell Therapy was aired in an open, public meeting and was properly justified, documented and approved.

Contract Award Process for Community Support Program

Each year Milwaukee County solicits proposals to serve a variety of human services clients. Effective July 19, 2004, a Request for Proposals (RFP) process was initiated that included the Community Support Program. Proposals were due on September 20, 2004. BHD received proposals for 10 CSP sites from eight firms; two firms (Bell Therapy and Wisconsin Correctional Services) each proposed to serve two sites. Of the eight firms, all but one (Ravenswood) was a current CSP service provider.

A five-person review panel scored the evaluations. This panel was made up of three County employees and two volunteer citizens. Two of the County employees are employed by DHHS but are not on the CSP program staff (one is from the Accounting group and one is from Contract Administration). At the outset of our review, BHD informed us that its own review of the process used for awarding this contract identified a technical breach of BHD protocol. Internal BHD procedures call for review panels to be comprised of a majority of non-staff panelists. As noted above, in this instance, three of the five individuals were County employees. It does not appear that there was any negative result of this error.

We note that, while there is a benefit to be gained from outside volunteer input, employees of the program are more directly accountable to the citizenry. In any event, the panel's recommendation

is advisory to the department head. Since the appropriate mix of external expertise and internal staff familiarity may vary according to circumstances, it is our recommendation that DHS protocols be modified to leave the composition of advisory evaluation panels to the discretion of the department head. Ultimate contract approval by the County Board provides a final check on the integrity of the process.

Panelists scored proposals on nine criteria (service delivery plan, outcomes / performance, staffing, experience, mission and goals, budget justification, administrative ability, cultural diversity and living wage). Most of these categories had subcomponents to assist the evaluators in arriving at a score. Documentation of the panel's scoring was consistent with the final tally sheet prepared by program staff. The tally sheet (see Exhibit B) summarizes the scoring of the evaluators for each of the 10 CSP locations. The highest rating achieved on a 200-point scale was a 188.9 and the lowest score was 87.8. Bell Therapy's scores were 157 and 148.2. Thus, the scores for the seven proposers that were recommended for contracts were clustered within a range of 40.7 points. In clear contrast, the lone proposer who was not recommended for a contract was scored 60.4 points below this cluster. Scoring patterns were fairly consistent among the evaluators. Price sheets (see Exhibit C) indicate that one Bell Therapy site, the larger of the two, had a relatively low net cost per slot while the other had a relatively higher cost than the other proposals.

While Bell Therapy sites ranked lowest of the proposals that were accepted, BHD administrators have stated that client continuity of care is an issue in deciding whether to cease doing business with an agency. In this instance, proposals were ranked fairly close among the providers currently serving CSP clients. All were awarded contracts for continued services. Of these, the number of slots remained the same for all except Milwaukee Mental Health Services which was expanded from 80 slots to 125. The only agency that submitted a proposal that was not accepted was a new provider in this service area. The scoring and pricing for the new proposal was clearly inferior to that of the existing providers, including Bell Therapy.

Campaign Contributions from Phoenix Care System Executives

In March 2004, an amendment to the Milwaukee County Code of Ethics (Milwaukee County Code of General Ordinances Chapter 9) was adopted. The amendment prohibited any individual with an interest in a County contract from making a campaign contribution to any County official with contract approval authority during the time that a contract was under consideration. (Note: Due to an oversight, the original amendment published in April 2004 prohibited contributions of this nature to "any candidate for an elected County office". The correct ordinance addressing "any County

official” was published in December 2005—see Exhibit D). For purposes of the new ordinance language, the contract consideration period begins when a contract is submitted to the County and ends when a contract is finally approved.

As noted above, the RFP for CSP proposal materials were first available July 19, 2004, proposals were due on September 20, 2004 and contracts were given final approval by the County Board on December 16, 2004. During 2004, the County Executive’s campaign fund received several contributions from two officials of Phoenix Care Systems (the parent company of Bell Therapy). Among these were two donations made on August 26, 2004. One was in the amount of \$125 and the other was \$200. While these contributions were made after the RFP process was initiated, they were made prior to the contract consideration period as defined in the ordinance. Despite the legality of the contributions under the Milwaukee County Ethics Code, the County Executive returned both contributions to the contributors on December 15, 2005. Campaign financing reports filed by the 19 Milwaukee County Board Supervisors showed that, during the contract consideration period, there were no contributions from the Phoenix Care Systems officials that contributed to the County Executive’s campaign.

The 2004 amendment to the Code of Ethics established a policy regarding the acceptance of donations during contract consideration with the beginning point of the approval process established at the point when contracts are submitted. However, the “time out” period only defines a period when certain contributions are prohibited. The amendment cannot be read in isolation from the balance of Chapter 9 which prohibits County officials and employees from taking anything of value that may affect their decisions regarding a contract. The Code specifically allows the acceptance of campaign contributions that are permissible under State Statutes.

DHHS administrators and the evaluation panel members were all questioned regarding their knowledge of any campaign contributions by Bell Therapy and about any pressure or contacts related to the evaluation and award of the contract. Each individual stated that they were unaware of any contributions and that they had not been contacted by anyone regarding a vendor preference. There is no evidence to the contrary.

Conclusions

Based on our review, we conclude:

1. The December 2004 sole source Bell Therapy contract for an emergency care facility was properly awarded.
2. The RFP process used to award a contract to Bell Therapy for 2005 Community Support Program services was proper.
3. Campaign contributions from officers of Bell Therapy's parent company were made in a manner consistent with the Milwaukee County Ethics Code.

Please refer this report to the Committees on Finance and Audit and Health and Human Needs.

Jerome J. Heer

JJH/cah

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